

LAKE COUNTY PLANNING AND ZONING COMMISSION
March 20, 2018
Lake County Courthouse
Rm 317, Environmental Health/Planning Conference Room
Meeting Minutes

MEMBERS PRESENT: Paula Holle, Diana Luke, Bill Barron, Gale Decker, Dave Stipe

STAFF PRESENT: Jacob Feistner, Rob Edington, Lita Fonda

Dave Stipe, Chair, called the meeting to order at 10:00 am.

42954 LLC VARIANCE—Melita Island/Labella Lane Zoning District (10:01 am)

Jeremy Nelson introduced himself and Julia Terzo at Gale's request. Rob Edington explained that they represented 42954, LLC and he presented the staff report. (See attachments to minutes in the March 2018 meeting file for staff report.) Rob confirmed for Gale that guest houses were acceptable under the zoning. Gale reviewed that a guest house was a separate structure with the purpose of providing temporary living quarters for nonresidents. Rob continued with the staff report, including a description of the public comment received. He concluded that staff sympathetically were unable to recommend. He gave examples of hardships that would be unique to the property. Staff didn't typically interpret the use of a property as a hardship. A more appropriate response to [this] variance request would be a zoning amendment. Other zoning districts did have [Vacation Rentals By Owners (VRBO's)] as a permitted use, and these were increasing in popularity. It was a challenge they would have, moving forward. A lot of questions were yet to be answered with vacation rentals.

Dave said Wally was working with Doug Wold on the legality of prohibiting vacation rentals in zoning districts. Rob did not have an update on that. Jacob noted they were working to amend the wording [for the zone] that Doug W lived in. Dave remarked it wasn't overall then.

Bill reiterated timeframes. The house was built in 1976. Zoning came in 1986. He asked if the use would be grandfathered. Rob said if the use was there before the adoption of the regulations, it would be a legally nonconforming use. The structure appeared to be conforming. Jacob clarified that it had never been licensed as a vacation rental. Paula checked that renting would be allowed if it were more than for 30 days. Diana confirmed that less than a month was what put it into that public accommodation licensing.

Jeremy provided that they purchased the property in June 2016. Jacob explained for Diana that this zoning hadn't been updated since it was first adopted. In the districts that had been amended to address vacation rentals, Diana checked that the only stipulation at that point was that the whole property be a vacation rental. Jacob said there were usually a couple of conditions. This one was one of the main things, along with getting the state license. They would usually look at the whole property and make sure other things conformed as well as part of the review. One of the things that made this zoning unique was that it came about before Lake County had a growth policy. The citizens of the area initiated it, not Lake County. Paula concluded the owners at that

time were pretty specific about what they wanted. Jacob agreed. The County hadn't initiated an amendment because it was citizen-initiated to begin with. The citizens would initiate that unless Lake County wanted to take that on.

Gale and Dave asked about restrictions on guest houses. Jacob said that was tied to the definition for a primary residence. It had to be for the short-term use of guests of the primary residents, which were supposed to be sole long-term residents. It couldn't be rented separately. Diana mentioned the other zoning districts specifically said the entire property [had to be rented] so you didn't suddenly have the impact of two residences full-time on the neighborhood.

Dave reminded that if they were able to rent it out, to be careful about decks, as a couple had caved in, in Lake County.

Diana asked how many neighbors had been notified for the legal notice. Rob noted it was also noticed in the paper.

Dave asked about the odds of the applicants being able to change the roughly 35-year old original zoning. Rob couldn't speak for the neighborhood. There were other vacation rentals in the vicinity. Dave said you had a different group of people than those who made the original rules. How complicated was the process? Jacob said it worked as a permitted use in other zoning districts. Several steps were involved [in the amendment process.] You'd have to go through the public review and notice it in the neighborhood and zoning district, so they'd have an opportunity to comment. There would be a protest period. He compared it to the process to undo the Density Map.

Gale asked the applicants how many days they anticipated it would be rented out in a summer. Jeremy replied they'd capped that for themselves. Part of the reason of owning the house was so the owners could enjoy it. They'd like to rent it between 4 and 5 weeks a year, primarily being spread out between June and September. They spent a fair amount of time in it in the winter. Paula checked that long term rental for the winter months didn't work as an option for them.

Julia said they figured being part of the neighborhood and community was not to put renters in full time. She thought you wanted the homeowners as+ present as possible. They interpreted it as they would be around for a few weeks, and then have a renter for a week, and back to them for a few weeks. That mitigated things and kept them talking to the neighbors and the neighborhood, and aware of what was going on in the house, and upkeep and so forth. That was how they figured they would keep their relationship in the neighborhood.

Gale referred to Virginia Tribe's comment letter. Did they rent primarily to out-of-area folks or were there often [other] situations. Julia said they found most [renters] had ties to the lake. She and Jeremy weren't doing parties. They looked for the multigenerational thing with a tie here, where [someone] just wanted a family reunion in a house that was quiet. She thought that was why the neighbors had enjoyed who they'd had there. Jeremy added they capped the maximum number of guests at 10, although the house accommodated 16 as far as beds. There was a good screening process through the VRBO system.

Bill asked how existing nonconforming use worked with this particular building. Jacob didn't think it applied. The building existed and was conforming as far as they could tell. The proposed use didn't conform.

Dave asked if there was a way to give a timed (temporary) variance to give the owners an opportunity to change the zoning. Jacob thought the board had the ability to approve a variance with conditions of approval if that was something the board wanted to do.

Motion made by Diana Luke to approve the variance request, with the language that rental be for the entire property, and [include] similar requirements to the other zoning (the conditions that Jacob spoke to). Diana said it was sometimes difficult for homeowners to lead the charge or carry the process, as far as changing or amending the regulations unless they were an individual who had that background, like Doug Wold. She clarified for Dave that this was a motion for a permanent variance, and for Gale that this was for the individual property, not the other properties in the zoning district. Each owner would have to come in individually for a variance until such time that the zoning was amended and maybe adopted with similar language to other zoning districts, which had the requirement that the entire property be rented as a whole and then had other limitation to which Jacob could speak better.

Jacob said he'd printed out conditions and terms that they'd used. He summarized them at the request of the board.

- All use of the property shall be in accordance with the approved plans on file with Lake County (a standard condition).
- This approval allows for the existing single family residence to be used as a vacation rental in accordance with the rules and regulations of the zoning district. (This zoning district didn't have any but they would formulate some kind of wording there.)
- The property must be rented as a whole. No independent rental or habitation of more than one living unit shall be permitted without prior approval of the governing body.
- The property must maintain its State license for short term vacation rental.
- This approval is not transferrable. (Future owners would have to go through the same process if you sold the property.)
- Night time lighting is to be downward pointed.
- They included a condition about stormwater.
- They included a condition that it had to comply with sanitation requirements.
- [Some] general conditions: everything had to take place within the property boundaries and easements. Lake County could pull the approval if they found violation.

Dave said they could tie to the limit of 10 people that the owners were already doing so you don't get more people showing up in 5th wheels. That's where [VRBO's] seemed to get overwhelmed. Julia agreed that this was one of their concerns.

Jacob commented that if the board decided to approve this, they needed to address that first finding with wording to support approval. Jacob read the finding: 'Due to unusual circumstances a strict enforcement of such regulations would result in undue hardship.' Right now Rob had the explanation there that it was supposed to be tied to characteristics of the land,

not circumstances of the owners. They would need to add wording to support that the board felt this would create an undue hardship if this was prohibited.

Gale had mixed feelings. He read that 'single family residential use is the sole use allowed within the district'. It seemed like they were expanding on that use. He certainly sympathized with what the owners wanted to do and why.

Motion seconded by Gale Decker. Dave summarized the motion was to approve it with amendments with the caveats that Jacob would come up with. Jacob reminded that the board needed to fix the findings prior to voting.

Bill suggested approaching this as an existing use that was being continued and maintained. Jacob explained there was never an approval for vacation rentals in place. Bill said things were done differently back then. Jacob said Diana would know [since] that was what she regulated.

Diana verified with Jacob that finding A on pg. 5 was the hang-up. She noted that Rob had stated [the zoning] didn't explicitly prohibit this. The board could find the Nelson-Terzo use as a single-family residence for the majority of the year and the limited use of a vacation rental. Dave said it was their interpretation that this wasn't single family use. Jacob reiterated the tough part was [identifying] the hardship that was tied to the property resulting from enforcement of these regulations. Diana said she'd found that the hardship was the tax for a lot of people. People found it was a use to offset the cost and the upkeep of the property over the entire year. Sometimes you ran into neighbors that didn't want to comment on the use of the property because they might see themselves in similar circumstances in the future in needing to rent to offset the costs.

Gale thought they would have to address the vacation rentals as a county in an organized way so they didn't have the parking, noise and traffic issues that went with it. Jeremy understood the reputation that some vacation rentals had and were trying to change that. Diana said that was why she asked that the motion speak to those conditions that had been used in similar zoning districts. Could they change the finding of fact to say the board felt if those conditions similar to the other zoning districts were met? Dave thought they weren't being approved for general vacation rentals where anything goes. They were renting to a single family and limiting the impact to not exceed that. They couldn't bring in campers or have a bunch of tents. Diana asked if the hardship was that the zoning district hadn't been amended to reflect current uses and needs of the neighborhood. Dave didn't know that existing law would hold that [up]. Bill thought that was part of the issue. Paula described that when she googled 'VRBO' yesterday, a bunch in this area popped up. There were probably people doing it in violation. Jeremy said they tried to approach this head-on and make sure they were compliant. Julia added they didn't know that they wouldn't be compliant when they were looking to purchase. They didn't purchase in areas that prohibited it. They interpreted it that if they were renting to single family, they were complying with single family zoning because that was how they interpreted it in Missoula. She knew vacation rentals were new, so it wasn't specified in everything.

Gale asked if they could say in the findings that the board felt they were complying with 'single-family' in spirit. Diana reiterated the 10-person limit. Jacob said those comments were

supportive of [finding of fact] C but didn't really address [finding of fact] A. Diana asked about Julia's comment that they purchased it thinking 'single family residential' and Dave added that it wasn't prohibited. Jacob said the best argument he'd heard so far was what Diana said earlier, tying it to the zoning document itself and the fact that it hadn't been amended since its 1986 creation to reflect current land uses and needs of landowners. Dave asked if they could approve it for 2 years to give the applicants time to work with their neighbors to update the zoning. Diana thought it might be better to have them waive the right of protest for these zoning amendments. It was difficult, as a property owner, to make long term goals, and Jacob's point that it wasn't transferrable to another owner put a limit, but 2 years would fly. Bill thought the limit dealt with the hardship. You could tie C into that. If the zoning wasn't amended or changed, this variance went away when they sold the property and the buyer knew it. Dave thought a 2-year variance limited your exposure for making a wrong ruling. Diana asked about the BOA and whether it was typical to have a time limit. Jacob said generally the variance was for the time that the use or structure was in place. Temporary dwellings, like the use of an RV, had a 2-year limit.

Dave thought what zoning was supposed to be was a reflection of the neighborhood's values. He questioned whether the values were the same in 2018 as in 1985. Diana thought even in the public accommodation realm, a lot of zoning districts spoke to bed & breakfasts (B&B's). They saw that as an acceptable use. That was owner-occupied. It was interesting in the current vacation rental listings, you ran into very few that were B&B's. They were usually the whole structure or they were parts of the structure and no breakfast. She would go with Jacob's [suggestion]. The hardship was that it was a zoning document that hadn't been updated and amended and reflected by the ownerships within that district since 1986.

Jacob said he could combine what Diana said and what Bill said. The structure was developed in 1976. Zoning was created in 1986. As a result of the zoning not being amended since its creation, the existing development cannot be used as current needs dictate or the land use, the desires of the landowner, or something along those lines, if that was acceptable to the board. Then they could tie in the 10 conditions that he read earlier that were used on other vacation rentals. Gale thought they needed a motion to accept the rough draft of the findings of fact. Dave asked if the motion included a time limit or if it was permanent. Diana thought it was tied to the ownership.

Motion amended by Diana Luke to approve the variance with the 10 conditions as read by Jacob Feistner and also [with] the amended findings of fact as read by Jacob Feistner.

Amended motion seconded by Gale Decker. Motion carried, all in favor.

OTHER BUSINESS (10:50 pm)

None.

Motion made by Diana Luke, and seconded by Paula Holle, to adjourn. Motion carried, all in favor, at 10:50 am.